

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CITY OF GRASS VALLEY,

Plaintiff, No. CIV S-04-0149 DAD

v.

NEWMONT MINING CORPORATION,
et al.,

Defendants.

ORDER

Plaintiff has filed a motion to continue the trial date by several months and to order David Baker, Vice-President of Environmental Affairs for defendant Newmont Mining Corporation, to participate in a private mediation session prior to any continued trial date. Plaintiff has also requested expedited consideration of its motion. Plaintiff's motion was not noticed for hearing and was not accompanied by an application for order shortening time. Defendants have filed opposition to plaintiff's motion, and plaintiff has filed a reply.

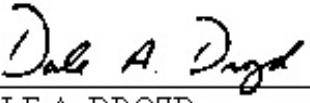
Upon consideration of the history of this case and all papers filed in connection with plaintiff's motion, the undersigned does not find good cause to continue the trial date or to order Mr. Baker to participate in a private mediation session. With regard to the latter, Local Rule 16-270(f) governs the participation of principals in court settlement conferences and is not applicable to private mediation. Federal Rule of Civil Procedure 16(c)(1) permits the court to

1 require that a party or its representative be present or available to consider possible settlement at
2 the court's Pretrial Conference. In G. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648,
3 650 (7th Cir. 1989), the question before the court was whether a federal district court may order
4 litigants to appear before it in person for the purpose of discussing settlement of the case. Thus,
5 all of the authorities cited by plaintiff are inapposite.¹

6 IT IS ORDERED that:

7 1. Plaintiff's December 15, 2008 motion to continue trial date and to order David
8 Baker to participate in a private mediation session (Doc. No. 464) is denied;
9 2. Jury trial is confirmed for Tuesday, January 20, 2009; and
10 3. The Final Status Conference set for Tuesday, January 13, 2009 is confirmed.

11 DATED: December 19, 2008.

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13 Dale A. Drozd
14 DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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21 ¹ The court will entertain a request for a court settlement conference, if all parties join in
22 the request. The undersigned is willing to schedule a settlement conference before himself if all
23 parties are willing to file written waivers of any claim of disqualification thereby. The
24 undersigned is also willing to inquire whether Magistrate Judge Moulds, who conducted several
25 settlement conferences in this case, has available settlement conference dates prior to the January
26 20, 2009, trial date. Alternatively, one of the other magistrate judges of the court may be selected
by the Clerk of the Court to preside over such a settlement conference based upon their
availability. Any inquiry concerning these alternatives should be directed to the courtroom
deputy of the undersigned only after all counsel are in agreement as to how they wish to proceed
and the dates on which they and their principals capable of settling this matter on any terms could
be available for a court-assisted settlement conference.